No. 617

IN THE

Supreme Court of the United States

October Term, 1952

[illegible] Oil Company, *Petitioner*,

v.

Iowa-Des Moines National Bank, Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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INDEX.

Subject Index.

TABLE OF CASES

CONSTITUTION

Page

STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

DISTRICT OF COLUMBIA, *Petitioner,*

v.

JOHN R. THOMPSON COMPANY, INC., *Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Respondent, John R. Thompson Company, by its counsel, opposes the granting of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit for the reasons hereinafter stated.

QUESTION PRESENTED

Should this Honorable Court review the decision of the United States Court of Appeals for the District of Columbia Circuit that the Acts of the Legislative Assembly of the District of Columbia of June 20, 1872, and June 26, 1873, which, among other things, provided for a One

One Hundred Dollar fine and forfeiture of license for refusal by a restaurant to serve all respectable well-behaved persons, without regard to race, color, or previous condition of servitude, are not now in force because (1) as the Chief Judge and three Circuit Judges ruled, they were legislation and therefore could not have been enacted by the Legislative Assembly, or in any event, that they had been expressly repealed by the District of Columbia Code of 1901, 31 Stat. 1189, or (2) as another Circuit Judge ruled, were either legislation and so initially invalid, or subsequently repealed, or were municipal regulations which had been abandoned by seventy-nine years of disuse, or repealed by implication.

PETITIONER'S SPECIFICATIONS OF ERRORS

Petitioner's Specifications of Errors to be Urged, found on page 6 of its brief, are five in number. The first is a conclusion, that petitioner does not agree with the result of the judgment below. Of the remaining four specifications only one, specification (4), reflects a proposition concurred in by a majority of the Court of Appeals; Circuit Judge Prettyman, in concurring in the judgment, did not find it necessary to rule upon the propositions reflected in specifications (2), (3) and (5) (R. 89). The only specification of error, therefore, which has any basis in the record is, in the words of the petitioner:

> The United States Court of Appeals for the District of Columbia Circuit erred in holding that the Acts of the Legislative Assembly are presently unenforceable either because they were repealed or "abandoned".

It is respondent's position that the Court of Appeals did not so err, and that the case presented to this Honorable court is not such as merits review upon Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I

Even Were the Writ Granted, This Honorable Court Would Not Consider the Constitutional Issue Claimed to be Involved.

Petitioner urges on page 9 of its brief that the writ be granted so that this Court may express an opinion as to how much, if any, of its legislative power concerning the District of Columbia, pursuant to Article I, Section 8, of the Constitution of the United States, Congress could, if it should see fit in the future, delegate to a local governing body. Even were the writ granted, however, this Honorable Court would not express an opinion on this question of constitutional law. With wisdom, this Court has followed the principle that it will not express itself upon questions of constitutional interpretation in cases which can be disposed of upon general principles of law, or upon accepted criteria of statutory or regulatory interpretation. *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101; *Asbury Hospital* v. *Cass County*, 326 U. S. 207. As this Court said in the *Spector Motor Service* case:

> If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable.

The case at bar may be disposed of upon a single ground which does not involve any constitutional question, namely, the interpretation and construction of the repealing provisions of the District of Columbia Code of 1901, Act of March 3, 1901 (31 Stat. 1189). Section 1 of that Code provided that:

> The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and

> admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.

It will be observed that this section did not preserve the acts of the Legislative Assembly. Section 1636 of the Code, however, provided in part as follows:

> All acts and parts of acts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed except: * * *

Then followed eleven exceptions, only three of which, the third, the fifth, and the eighth, are material here.

The third exception reads:

> Acts and parts of acts relating to the organization of the District government, or to its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

The Acts of 1872 and 1873 were legislation, not "police regulations". They were, in fact, civil rights legislation. These Acts defined and denounced a new offense. That is, they provided that the exercise of certain rights theretofore enjoyed by restaurant proprietors and others should thereafter constitute a crime. Their purpose was to alter the mores of the people of the District of Columbia by legislative fiat. Specifically, their object was to impose

upon the District of Columbia the principle or theory of social equality. They did not attempt to regulate pre-existing rights or duties but rather to create and enforce new rights and duties, general in nature. In so doing, the Acts imposed upon restaurant owners and others a duty to sell to all and thus interfered with their freedom to contract or not to contract with whom they pleased. The Acts were no more municipal ordinances or police regulations than was the Civil Rights Act of 1875 containing similar provisions, which was enacted by the Congress (18 Stat. 335). Both the Civil Rights Act of 1875 and the Acts of 1872 and 1873 undertook to promulgate a policy of social equality and enforce it by criminal penalties. "The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct". *Yakus* v. *United States*, 321 U. S. 414 at 424.

The Acts in question sought to change the legal nature of the restaurant business. As was so forcefully stated by Chief Judge Stephens in his opinion below (R. 79-81):

> In requiring restaurant keepers, upon pain of fine and license forfeiture, to serve any respectable, well-behaved person without regard to race, color, or previous condition of servitude, the enactments limit the freedom of the restaurant keeper in the use of his property, in the exercise of his power to contract, and in the carrying on of a lawful calling. Before the enactments, he could choose customers according to his own business or personal desire. The enactments lift restaurant keeping, theretofore strictly a private enterprise, to the level of a "public employment"—thereby altering the common law, which required inns, but not restaurants, to serve all travellers. *Alpaugh* v. *Wolverton*, 184 Va. 943, 36 S. E. 2d 906 (1946); *Nance* v. *Mayflower Tavern*, 106 Utah 517, 150 P. 2d 773 (1944); Beale, INNKEEPERS and HOTELS, 1906, §§ 15, 35, 53, 61, 301; Williston, CONTRACTS (Rev. Ed. v. 4, § 1066, pp. 2964, 2965); 43 C.J.S. INNKEEPERS, § 2, p. 1136. The enactments do not relate, in the usual sense of the terms, "to the promotion or protection of the public

morals and decency, the securing of the public safety against fires, explosions, riot or disorder, or other dangers to life and limb, the preservation of the public peace and order, the furtherance of sanitation and the safeguarding of the public health" which are the ordinary subjects of municipal regulation. Moreover, the essential object of the enactments was to prevent in restaurants—and in the other businesses enumerated—discrimination on account of race, color or previous condition of servitude, notwithstanding that such discrimination was customary in the District of Columbia at the time the enactments were promulgated. The enactments are in the nature of civil rights legislation.

The courts of the District of Columbia have held in many cases that attempted regulations, analogous to the Acts of 1872 and 1873, constituted general legislation and not police regulations or municipal ordinances. *District of Columbia* v. *Saville*, 1 MacArthur (8 D.C.) 581; *Roach* v. *Van Riswick*, MacArthur & M. (11 D.C.) 171; *Smith* v. *Olcott*, 19 App. D. C. 61; *Coughlin* v. *District of Columbia*, 25 App. D. C. 251; *United States* v. *Cella*, 37 App. D. C. 433; *Patrick* v. *Smith*, 60 App. D. C. 6, 45 F. 2d 924.

Whether or not the Acts of 1872 and 1873 were legislation or municipal ordinances or regulations depends upon their inherent character and nature and not solely upon their geographical scope. The brief of the United States as *amicus curiae* erroneously assumes that the geographical test is the only one to be applied. This so-called test is of no value since the scope of all acts of the Legislative Assembly was limited to the territorial confines of the District of Columbia so that under this test all enactments of the Legislative Assembly would be classified as municipal regulations regardless of subject matter. As has been demonstrated, however, the subject matter of the Acts under review was such that they must be held to have been attempted legislation.

Even if the Acts of 1872 and 1873 could be called municipal regulations in any sense of the term, it is clear from

the language of Section 1636 of the 1901 Code, without reference to any extrinsic criteria, that the words "police regulations" and "acts relating to municipal affairs only" in the third exception were used in a sense too restrictive to include the Acts here in question. This is apparent from analysis of the eighth subsection of Section 1636 of the 1901 Code which saved from repeal the following acts:

> An Act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regulation of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicans in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicans and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally, all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

Were the third exception broad enough to save the Acts of 1872 and 1873 it would have saved, *a fortiori*, those listed in exception eight. Congress thus plainly demonstrated that the meaning of "police regulations" and "acts relat-

ing to municipal affairs only", which were saved in the third exception was not broad enough to include the Acts here in question.[1] To construe Section 1636 differently is to make the eighth exception unnecessary.

The fifth exception of Section 1636 of the 1901 Code exempted from express repeal "All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both." The Acts of 1872 and 1873 may have been "penal statutes" but under each Act the penalty for failure to serve food and drink without discrimination was both a fine *and forfeiture of the violator's license.* The forfeiture of the license was a part of the penalty. Each Act provided in mandatory terms that a violator "shall be fined $100 and forfeit his * * * license." The very use of the term "forfeit" implies a penal sanction. *Central Nat. Bank* v. *Dallas Bank & Trust Co.*, 66 S. W. 2d 474 (Tex. Civ. App.); *Southern Ry. Co.* v. *Inman*, 11 Ga. App. 564, 75 S. E. 908.

Express repeal by Section 1636 of the 1901 Code was one of the grounds of the opinion below by Chief Judge Stephens and was an alternative ground of the opinion of Circuit Judge Prettyman. A majority of the United States Court of Appeals for the District of Columbia Circuit, therefore, has so construed the 1901 Code which is a statute limited in its application to the District of Columbia. This Court has held in *District of Columbia* v. *Pace*, 320 U. S. 698, that it "will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District".

It was also urged before the Court of Appeals by respondent that if these Acts had not been expressly re-

[1] See also Nance v. Mayflower Tavern, 106 Utah 517, 150 P. 2d 773, holding that civil rights legislation was not an act relating to "municipal affairs" or a "police regulation".

pealed by the 1901 Code,[2] they were repealed by implication by the Organic Act of June 11, 1878 (20 Stat. 102), by the Act of Congress of July 1, 1902 (32 Stat. 622), and the Act of Congress of July 1, 1932 (47 Stat. 550), usually referred to as the General License Law of the District of Columbia (Sections 47—2301 *et seq.* of the District of Columbia Code (1951)) and by the regulations promulgated pursuant thereto, by the Alcoholic Beverage Control Act of 1934, Act of Congress of January 24, 1934 (48 Stat. 319) (District of Columbia Code (1951) Sections 25—101 *et seq.*), or that the Acts had, if held to be regulations, been repealed or abandoned by seventy-eight years of disuse, or had become obsolete. See the concurring opinion of Circuit Judge Prettyman below (R. 89) and *District of Columbia* v. *Robinson*, 30 App. D. C. 283, and *Reese* v. *Cobb*, 105 Tex. 399, 403, 150 S.W. 887, 889.

The judgment of the Court of Appeals might be affirmed upon any one of the foregoing grounds. None involves a question of constitutional law, nor does any present a question of national or general importance which would merit review by this Honorable Court upon a writ of certiorari.

II

The Only Specification of Error Reflecting a Proposition in Which a Majority of the Court of Appeals Concurred Does Not Involve a Question of National or General Importance.

Except for the first specification, which merely states a general conclusion, the only specification of error reflecting a proposition concurred in by a majority of the United States Court of Appeals for the District of Columbia Circuit (R. 60-100) is specification (4) which urges that the Court of Appeals erred "In holding that the Acts of the

[2] The 1901 Code expressly repeals all acts of the Legislative Assembly not saved by one of the eight exceptions to section 1636. This is not "repeal by implication" as suggested on page 17 of petitioner's brief. The question is purely one of statutory construction of section 1636 of the 1901 Code.

Legislative Assembly are presently unenforceable either because they were repealed or abandoned". The determination of whether the Court of Appeals erred in this respect involves the questions of law discussed in Section I of this brief. It does not present a question of national or general importance, but merely a question of the interpretation of statutes or regulations of the sort normally determined finally with respect to the District of Columbia by the United States Court of Appeals for that circuit. *District of Columbia* v. *Pace, supra,* 320 U.S. 298. It is not an appropriate question for review by this Honorable Court.

III

Petitioner Is Seeking an Advisory Opinion Upon a Hypothetical Case Which May Never Arise.

A primary reason for the granting of certiorari urged by petitioner (pages 7 and 10 of its brief) and by the United States (pages 10 and 11 of its brief) is that this Court should render an advisory opinion as a chart or guide to Congress in any future legislation it may consider to provide "home rule" for the District of Columbia. This is clearly demonstrated in the "Suggestion that the Case be Advanced," heretofore filed by petitioner and the United States. This Court has repeatedly ruled, however, that it is without power to give advisory opinions. *Barker Painting Co.* v. *Brotherhood,* 281 U. S. 462; *Busby* v. *Electrical Utilities Employees Union,* 323 U. S. 72; *Asbury Hospital* v. *Cass County, supra,* 326 U. S. 207. As this Court said in the *Barker Painting Co.* case:

> But a court does all that its duty compels when it confines itself to the controversy before it. It cannot be required to go into general propositions or prophetic statements of how it is likely to act upon other possible or even probable issues that have not yet arisen. See *Willing* v. *Chicago Auditorium Asso.,* 277 U. S. 274.

This view was reiterated in the *Asbury Hospital* case in which it was said:

> This Court is without power to give advisory opinions. It will not decide constitutional isues which are hypothetical, or in advance of the necessity for deciding them, or without reference to the manner in which the statute, whose constitutional validity is drawn in question, is to be applied. *Alabama State Federation of Labor* v. *McAdory*, No. 588, October Term 1944, decided June 11, 1945 (325 U. S. 450), and cases cited.

In *Busby* v. *Electric Utilities Employees Union*, 323 U. S. 72, 75, this Court said:

> It is not the function of the certificate authorized by 28 USCA § 346, 8 FCA title 28, § 346, to require this Court to answer questions not shown to be necessary to the decision of the case. A question will not be answered if it is hypothetical, Webster v. Cooper, 10 How (US) 54, 55, 13 L ed. 325, 326; Pelham v. Rose, 9 Wall. (US) 103, 107, 19 L ed. 602, 604; White v. Johnson, 282 US 367, 373, 75 L ed. 388, 394, 51 S. Ct. 115; Lowden v. Northwestern Nat. Bank & T. Co., 298 US 160, 162, 163, 80 L ed. 1114-1116, 56 S. Ct. 696, 30 Am. Bankr Rep. (NS) 724, or if it is dependent upon other questions which may not appropriately be answered, Jewell v. Knight, 123 US 426, 432, 433, 435, 31 L ed. 190, 192, 193, 8 S. Ct. 193; Lowden v. Northwestern Nat. Bank & T. Co. supra (298 US 166, 80 L ed. 1118, 56 S. Ct. 696, 30 Am. Bankr Rep. (NS) 724). This Court will not answer a question which will not arise in the pending controversy unless another issue, not yet resolved by the certifying court, is decided in a particular way. Triplett v. Lowell, 297 US 638, 647-649, 80 L ed. 949, 955, 956, 56 S. Ct. 645; Webster v. Cooper, supra (10 How (US) 55, 13 L ed. 326); cf. United States v. Buzzo, 18 Wall. (US) 125, 129, 21 L ed. 812, 813.

The main argument urged for the granting of the writ therefore appears to be a compelling reason why the writ should be denied.

IV

The Opinion of the Court of Appeals Does Not Rule Upon the Issue of Segregation Versus Non-Segregation.

The decision of the Court of Appeals dealt only with the present enforceability of long forgotten acts of a governing body which was abolished in 1874; it did not deal with the power of Congress, the Legislature for the District of Columbia, to enact anti-segregation legislation if it so desired. Segregation was not in issue. The decision of the Court of Appeals would have been the same, and its significance would have been no less, if the Acts of the Legislative Assembly in question had fixed the rate of charges by auctioneers for selling real estate, as did the act considered and held invalid in the case of *Smith* v. *Olcott, supra,* 19 App. D. C. 61.

It should also be emphasized that this is not a case wherein the local governing body was attempting to enforce segregation through governmental power, as petitioner now does in its schools; this case involved only the question of whether or not old acts, which sought to compel citizens to practice non-segregation, are still enforceable.

V

The Claim of Petitioner and Amicus That the Subject Matter of This Case Is of Great National Importance and Should be Reviewed Is Inconsistent With Their Position on the Merits.

Petitioner on pages 7 and 8 of its brief, and the United States as *amicus curiae* at pages 33 and 34 of its brief, urge that the subject matter of this suit is of national rather than local concern, and for that reason this Honorable Court should grant certiorari. Upon this theory petitioner would appear to concede that because of their nature the Acts in question were legislation and not mere regulation. It follows from this that petitioner cannot with consistency, contend the Acts were mere municipal regulations.

This inconsistent position in which petitioner and *amicus* find themselves emphasizes the fact that this record does not present a case which merits review upon a writ of certiorari.

VI

The Opinions of the Majority of the Court of Appeals Are in Accord With Previous Rulings of This Honorable Court and With Previous Decisions of the Courts of the District of Columbia.

Petitioner claims that one of the grounds relied upon by the Court of Appeals, that Congress may not delegate its legislative power over the District of Columbia, is not in accord with previous decisions of this Court. However, this ruling is consistent with this Court's opinions in *Stoutenburgh* v. *Hennick*, 129 U. S. 141, and *Metropolitan Railroad Co.* v. *District of Columbia*, 132 U. S. 1. Counsel for petitioner recognized this fact in his oral and written opinions to the committees of the 80th Congress considering proposed legislation for "home rule" for the District of Columbia.[3] Petitioner now urges, however, that this Court ruled differently in *Binns* v. *United States*, 194 U. S. 486, and *Barnes* v. *District of Columbia*, 91 U. S. 540. The *Binns* case, however, related to the territory of Alaska, not to the District of Columbia. The applicable constitutional provision there involved, Article IV, Section 3, does not employ the word "legislate", while Article I, Section 8 makes Congress the legislature for the District of Columbia. That section provides that Congress shall have power to "exercise exclusive legislation, in all cases whatsoever, over" the District of Columbia. Petitioner and

[3] Hearings before the Subcommittee on Home Rule and Reorganization of the Committee on the District of Columbia of the House of Representatives, 80th Cong., 1st Sess. pp. 240 *et seq.*; Joint Hearings before the Subcommittees on Home Rule and Reorganization of the Senate and House Committees on the District of Columbia, 80th Cong., 2d Sess. pp. 25-8.

amicus assume that stress was placed by the Court of Appeals upon the word "exclusive" in Article I, Section 8. The opinion of Chief Judge Stephens shows that the controlling words were rather "exercise" and "legislation". It is the inability of Congress to abdicate as a legislature which prohibits delegation to a subordinate body. *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter* v. *United States*, 295 U. S. 495.

The case of *Barnes* v. *District of Columbia*, *supra*, 91 U. S. 540, antedated *Stoutenburgh* v. *Hennick*, *supra*, 129 U. S. 141 and, moreover, it is not in point. It did not rule upon what powers Congress could delegate to the Legislative Assembly, but was concerned only with the question of whether the District of Columbia should be held responsible for the neglect and omissions of its officers whom it had no power to select or control.

The Court of Appeals for the District of Columbia in *Smith* v. *Olcott*, *supra*, 19 App. D. C. 61, said:

> Congress has express power "to exercise exclusive legislation in all cases whatsoever," over the District of Columbia, thus possessing the combined powers of a general and of a State government in all cases where legislation is possible. But as the repository of the legislative power of the United States, Congress in creating the District of Columbia "a body corporate for municipal purposes," could only authorize it to exercise municipal powers.

That Court's predecessor had made similar rulings *Roach* v. *Van Riswick*, *MacArthur and M.* (11 D.C.) 171 *District of Columbia* v. *Saville*, 1 McArthur (8 D.C.) 581 and counsel for the petitioner had so recognized such to be the law of the District of Columbia in his oral and written opinions to the Congress.

Petitioner, on page 9 of its brief, claims that the decision below has "erected a barrier to effective home rule in the District of Columbia." The decision erected no such barrier. The Court of Appeals decided only that Congress

cannot delegate its legislative power. The District of Columbia may be granted effective home rule within the framework of this doctrine. In fact, bills providing for home rule have recognized this principle and have proposed to grant home rule in accordance therewith.[4]

CONCLUSION

At pages 9 and 10 of its brief, petitioner claims that this case presents three questions which "should be settled by this Court". However, none of the questions raised by petitioner merits review.

First, the petitioner says the decision of the Court of Appeals "freezes the law of the District of Columbia in the pattern of racial discrimination which the people of the District of Columbia had thrice attempted, through their own representatives, to reject". This statement respondent submits is completely unjustified. The ruling of that Court does not freeze the law in any pattern whatever; on the contrary it leaves the people of the District of Columbia free to determine as individuals what their course of conduct will be. As a result of the decision there is no law in the District of Columbia that compels any man to discriminate or not to discriminate. Moreover, there is nothing in the decision which would prevent the Congress, if it so desired, from enacting civil rights legislation for the District of Columbia.

Second, petitioner says that the ruling of the Court of Appeals that Congress cannot delegate legislative power to the District of Columbia "erected a barrier to effective home rule in the District of Columbia". The ruling erected no such barrier. The principle applied by the Court is not inconsistent with home rule. The ruling of the Court of Appeals, moreover, is in accord with prior decisions of this

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[4] See e.g. Report of the Subcommittee on Home Rule and Reorganization, Committee on the District of Columbia of the House of Representatives on H.R. 6227, 80th Congress, Second Session, April 15, 1948, page 7.

Honorable Court, with prior decisions of the Courts of the District of Columbia and with opinions given by the petitioner's counsel to the Congress.

Third, petitioner says that the effect of the ruling of the Court of Appeals is that Congress is now unable to determine what powers, if any, it may delegate to a subordinate District of Columbia Government. Whether or not proposed or future legislation would be valid under Article I, Section 8, of the Constitution is a question which this Court cannot decide at this time. Such a decision would require an advisory opinion which this Court has many times declared it has no power to give.

None of the questions presented is worthy of review. Furthermore, this case can be decided by the interpretation of a statute limited in its operation to the District of Columbia, a matter properly left to the Court of Appeals of that District.

For these reasons it is respectfuly submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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